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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,796	12/31/2001	Marcille F. Ruman	KCC 4767 (K.C. NO. 17,080	2941
321	7590	11/04/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,796

Applicant(s)

RUMAN ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-19, 21-23 and 25-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-15, 21-23, 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-19, 25-27, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-2-04 has been entered.

Election/Restrictions

2. Claims 1-15, 21-23 and 28-29 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

Claim Rejections - 35 USC § 112

3. Claim 31 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 31 now claims the loop component having a stretchability of up to at least about 150% or in other words that the stretchability of the loop component is $\geq 0\%$. While page

33, lines 10-19 disclose that a wide range of materials can be used, these materials are disclosed as having to be sufficiently stretchable to exhibit the desired enhanced engagement capabilities or having a specific percent stretchability which is not what is claimed. Where is a stretchability of greater than or equal to 0% originally set forth? If Applicant traverses this rejection the specific portion of the specification relied upon should be set forth. Also note the following rejection.

4. Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As set forth in the preceding paragraph, it is now claimed that the stretchability of the loop component is greater than or equal to 0%, i.e. "up to at least". However claim 30 from which it depends claims the loop component is capable of elastic stretch and retraction. Therefore it is unclear whether the loop component at a minimum is considered to be elastically stretchable (It is noted that something that is stretchable is not necessarily elastic) as claimed in claim 30 or have a stretchability of greater than or equal to 0%? If the latter such is actually broader than the elastic stretchability required by the claim 30 it depends from, i.e. it fails to further limit the claim from which it depends.

Claim Interpretation Section

5. The terminology "article ... for personal wear" has not been specifically defined and therefore will be given its ordinary meaning, i.e. an article which is worn on the person. It is further noted that the claims do not require entanglement of the hook component and the loop

component but rather fastenable engagement of the two components. It is also noted that the loop material itself is not required to be elastic only the component it is a part of is claimed as elastic in some of the claims, i.e. the substrate. Due to the lack of clarity with regard to claim 31, the claim will be interpreted to require just some % greater than about 0% elastic stretchability. The terminology "secured" has also not been specifically defined and therefore will be interpreted as direct or indirect securement.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sommers et al, '401.

See Figures, i.e. the retaining device is an article which is worn on the person and includes a hook component 30 and a loop material secured to a substrate, e.g. see col. 3, lines 60-62, col. 4, lines 40-60, and col. 7, lines 10-15, i.e. the looped surface of the stretch bonded laminate making up strip 10 and the remainder of the laminate making up the strip 10, and col. 10, lines 25-40, i.e. the fastening components of the article are secured in engagement by arranging, engaging and urging by retraction as claimed. See also col. 9, lines 52-59. See also the response to arguments *infra*.

8. Claims 17-19, 25-27 and 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuen et al '595.

With regard to claims 17, 25-27 and 30, see Figure 7, col. 4, lines 13-28, col. 4, lines 14-46, i.e. the absorbent article for personal use is 70 and is formed to have a body 22 having first and second end regions, 28, 29, and comprises an inner layer 25, an outer layer 24 and an absorbent core 26, col. 13, line 38-col. 15, line 5, especially col. 14, lines 48-51, i.e. a mechanical fastening system is positioned on the body 22 including a loop component and a hook component, one is 53, 54, the other is 76, 78, 79 and 78 is secured to an elastic substrate, such that the substrate is capable of elastic stretch and retraction, col. 10, line 58-col. 11, line 30, i.e. the loop component is manually stretched around the wearer in a direction toward the downwardly slanted component and into opposed relationship thereto, engaged with the hook component and released so as to allow or provide an upward force or tension, i.e. a retractive force or urged sliding movement. With regard to claims 18-19 and 31, see col. 14, lines 29-41, i.e. stretching by about 280-300 %. It is the Examiner's first position that the Kuen et al reference explicitly teaches the claimed method. In any case the Kuen et al device is the same as the device described for carrying out the claimed method. Therefore there is sufficient factual basis to conclude the Kuen device would inherently perform the claimed process, see MPEP 2112.02.

Claim Rejections - 35 USC § 102/103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claim 27 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sommers et al '401.

See discussion of claims 25-26 supra. It is the Examiner's first position that since col. 10, lines 25-40 set forth that the elastic strip 10 is stretched and then released to allow retraction that the loop component, i.e. the looped surface of the stretch bonded laminate making up strip 10 and the remainder of the laminate making up the strip 10, is also stretched and then released and retracted. In any case, it is well known to attach the ends of an elastic band under tension by grabbing either one of the ends and stretching it to bring it into engaging contact with the other end which is stationary or by grabbing both ends and stretching them to bring them into engaging contact with each other. Therefore, to attach the ends of the elastic strip of Sommers under tension by stretching the one end including the loop component, bringing it into engaging contact with the other end and releasing the one end so that the one end, i.e. loop component, retracts, if not already, would be obvious to one of ordinary skill in the art in view of the well known interchangeability of methods of attachment.

Response to Arguments

11. Applicant's remarks with regard to the informalities on pages 11-14 of the 8-2-04 response have been considered but are either deemed moot in that the issue discussed has not been reraised or deemed not persuasive for the reasons set forth in the Note of the Advisory action of 7/21/04.

Applicant's remarks with regard to La Fortuna have been considered but are deemed moot in that such rejections have not been repeated.

Applicant's remarks with regard to Sommers et al on pages 14-16 have been considered but are deemed not persuasive. Specifically with regard to claim 25 Applicants argue that

Sommers et al does not define a seam and then urging sliding movement of one component relative to the other at the seam to promote increased engagement at the same. However as set forth in the cited portions of '401 in the prior art rejection supra the loop component can be the surface of the stretch bonded laminate which makes up the strip 10, e.g. the gatherable layer. This gatherable layer/loop component slides to flatten out as the strip 10 is stretched around the wrist or arm to bring the two fastening components together, i.e. the point of origin of the stretch is one of the ends or some point therebetween, the component fastens to the hook component to form a seam and the component slides /retracts to return to its gathered state in the direction(s) opposite to the direction of the stretch, i.e. back to the point of origin of the stretch. When tension is released, the sliding or retraction, i.e. gathering of the gatherable layer, necessarily occurs to some degree along the entire strip between the stretch point of origin and the seam and thereby, contrary to Applicants remarks, there is an urging of sliding movement of one component relative to the other at the seam which sliding movement necessarily promotes increased engagement (It is noted that the specific amount of sliding has not been claimed). For these same reasons Applicant's remarks with regard to Sommers in the paragraph bridging pages 17-18 and page 19, second full paragraph are also deemed not persuasive.


Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
November 1, 2004